

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

*County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*
Case No. 18-OP-45090 (N.D. Ohio)

**MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster**

**MOTION TO DISMISS COMPLAINT
BY DEFENDANTS WALMART INC., CVS HEALTH CORP., RITE AID CORP., AND
WALGREENS BOOTS ALLIANCE, INC.**

Defendants Walmart Inc., CVS Health Corp., Rite Aid Corp., and Walgreens Boots Alliance, Inc. (collectively the “Moving Defendants”) move to dismiss the Complaint pursuant to Rules 12(b)(1), 12(b)(6), and 9(b). The Complaint must be dismissed for the following reasons:

1. Plaintiffs lack Article III standing to bring their claims because they allege only harm that is common to the general public and derivative of harm incurred by third parties.
2. The Complaint purports to state claims against the Moving Defendants in their capacity as distributors, not dispensing pharmacies, and any claims against the Moving Defendants as dispensing pharmacies are manifestly insufficient under pleading rules.

3. The Ohio Product Liability Act abrogates Plaintiffs' tort claims.

4. Plaintiffs fail to state any claims on which relief can be granted. The Complaint fails to allege facts showing that the Moving Defendants negligently distribute prescription opioids, that the Moving Defendants' lawful distribution of a highly regulated product creates a public nuisance under either a statutory public nuisance or absolute public nuisance theory, that Plaintiffs conferred on the Moving Defendants any benefit that constitutes unjust enrichment, that the Moving Defendants engaged in a civil conspiracy, and that Plaintiffs were injured by any criminal acts by the Moving Defendants.

For these reasons, and as set forth more fully in the accompanying Memorandum of Law and in the motion submitted by Defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation, in which the Moving Defendants join, the Complaint must be dismissed.

Dated: 25 May 2018

Respectfully submitted,

/ s/ Tara A. Fumerton

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, this Motion to Dismiss was filed electronically on the master docket for this matter. Case Management Order One provides that “[e]lectronic case filing of a document, other than an initial pleading, in the master docket shall be deemed to constitute proper service on all parties.” ECF No. 232 at 8 (No. 1:17-MD-2804).

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